

E 'Specially' DECS

A weekly email update from the Division of Exceptional Children Services to Directors of Special Education on current issues, information and events.
June 28, 2004 - Volume I, Number 9

Question of the Week:

Did the 2004 Kentucky Legislature pass bills in addition to Senate Bill 115 that have an effect on special education? (See E 'Specially' DECS, Volume 1, Number 6 for information about SB 115.)

Yes - House Bill 10 relates to home/hospital instruction. It was passed by the Kentucky Legislature in 2004 and is effective on July 13, 2004. The bill:

- * Provides that a student with a disability may be determined eligible for home/hospital instruction service by the Admissions and Release Committee (ARC) s if the IEP specifies this placement and it is in the least restrictive environment (LRE).

- * Allows services in home/hospital instruction for students more than six months without having two signed statements from a professional if the original medical statement certifies that the student has a chronic physical condition that prevents or renders school attendance inadvisable as the condition is unlikely to substantially improve within one (1) year (It does not apply to mental health conditions)

- * Allows an ARC to determine students with disabilities eligible for home/hospital services for up to three years if the student has a chronic physical condition unlikely to substantially improve within three (3) years. ARC must still annually consider the child's condition and the existing documentation to determine whether updated evidence is required. Updated evidence shall be provided for a child upon determination of need by the ARC, or at least every three (3) years.

What is the potential impact on exceptional children? The new legislation allows an ARC to assume role of home/hospital review committee in determining student eligibility for home/hospital instruction services, in

accordance with the IEP, LRE, and documentation that the student has a mental or physical condition that renders school attendance inadvisable. It also provides the ARC with the ability to determine that students with chronic physical conditions only require evidence of need every three years, with annual review of any need for more current documentation. The three (3) year option does not apply to students with mental health conditions, and such students would still require annual evidence of need in accordance with their IEP and LRE.

Important Note: The new provisions set forth in HB 10 impact the current Home/Hospital Eligibility Form. Since the current form is incorporated by reference into the current Kentucky Administrative Regulations, the form cannot be changed until the regulation is amended. Directors of Special Education need to relay information about HB 10 to ARC chair people, Directors of Pupil Personnel and other district staff. ARCs will need to work closely in the meantime with their DPPs and Home/ Hospital Review Committees to implement the provision of the IEP serving as evidence of eligibility for Home/Hospital services for students with disabilities in lieu of a completed Home/Hospital eligibility form.

Please contact Preston Lewis at plewis@kde.state.ky.us <<mailto:plewis@kde.state.ky.us>> if you have questions regarding this legislation.

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The Question of the Week will be an on-going feature of E 'Specially' DECS.

If you have a special education question that you believe would be of general interest to other Directors of Special Education, email your suggestion to Sammie Lambert at slambert@kde.state.ky.us

Letter of Clarification from Judy Mallory, DECS Director, concerning "highly qualified", collaboration, and the continuum of services for students in special education.

There has been some concern and confusion around how the No Child Left Behind Act of 2001 (NCLB) requirement of having a "highly qualified teacher" for every student affects placement options for students with disabilities.

There are two issues involved here - (1) the NCLB definition of "highly qualified" and (2) the Individuals with Disabilities Education Act (IDEA) requirement to provide a "continuum of services."

1A. What are the NCLB requirements for "highly qualified"?
First, NCLB states that all teachers hired to teach core academic subjects must be highly qualified. "Highly qualified" generally means full certification (an emergency or probationary certification is NOT full certification), a bachelor's degree, and demonstrated competence in the subject knowledge of the core subjects. Core subjects include English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. "Highly qualified" under NCLB does not pertain to specific skills a special education teacher might teach to students with disabilities such as study skills or behavior management techniques. These requirements apply to special education teachers at every level teaching in any setting from resource room or collaborating in a regular education classroom. If a teacher is considered "highly qualified" in a content area then there should be no concern about delivery of instruction in any setting.

1B. How can you determine if a teacher is "highly qualified"?
Many teachers and districts mistakenly assume that most special education teachers do not meet the "highly qualified" requirement, while in truth, most actually do. The quickest way to determine if a special education teacher is highly qualified is to enter that teacher's information in the Highly Qualified Teacher Calculator. The calculator can be found on the EPSB's webpage at www.kyepsb.net <<http://www.kyepsb.net>>. The calculator, using the HOUSSE index (high, objective uniform state standard of evaluation), is a "walk-through" instrument that weighs college-level coursework, teaching experience, professional development activities, and achievements/awards in determining if an individual teacher is highly qualified in the core academic area in which s/he is teaching. Another way to meet this requirement is through the Kentucky Teacher Internship Program. At the end of this letter is a section of NCLB Addendum #4 (March 9, 2004) from EPSB outlining exactly how a special education teacher can be highly qualified through his/her KTIP experience.

1C. What can a teacher do to become "highly qualified"?

If a special education teacher is not considered highly qualified on the Calculator, there are several ways to meet the requirement. The easiest way is to take and pass the Praxis exam for elementary teachers (#0011) or to take and pass the Praxis exam(s) for each of the core academic subjects taught. (NOTE: "Teachers holding the 'Exceptional Children - Moderate and Severe Disabilities, P-12 Certificate,' who have passed both the Praxis #0352: Application of Core Principles Across Categories of Disabilities and Praxis #0321: Teaching Students with Mental Retardation, or who have met the EPSB's HOUSSE are to be considered "highly qualified" to teach moderately and severely disabled students." Addendum #1, July 7, 2003 Kentucky's Education Professional Standards Board.) Teachers may also meet "highly qualified" requirements by taking additional course work or attending high quality professional development sessions in the core content area.

1D. Are there sanctions in place if schools don't meet this requirement?
To date, NCLB requires that all teachers be "highly qualified" by the end of 2005-2006. However, the federal government is looking for a "good faith effort" to achieve this goal and, so far, no sanctions are in place for schools or districts that don't meet this requirement. Given that the issue will be addressed more fully in the upcoming reauthorization of IDEA, we encourage schools and districts to be careful about making major changes in special education services in an effort to satisfy the current requirements of NCLB. The U. S. Department of Education has stressed that, when in doubt, do what is best for the student, and conflicts between NCLB and IDEA will be resolved as we go along. Keep in mind also that the requirements of "highly qualified" do not address who can give grades or credits to students. Currently, the teacher offering the content, whether in a resource setting or collaboration setting and whether considered "highly qualified" or not, can assign grades to students and students will receive a credit for that class.

2A. What is the "continuum of services" as required by IDEA?
The second issue is the requirement under the Individuals with Disabilities Education Act (IDEA) that each student who qualifies for special education

be offered a continuum of alternative placements (34 C.F.R. § 300.551) based on their individual educational needs. This continuum generally includes instruction in the regular classroom (with or without supplemental aids and services), special classes (resource or self-contained), special schools, home instruction, and/or hospitals or institutions. This federal mandate of offering a continuum of placements can also be found in the Kentucky Administrative Regulations for Special Education Programs - 707 KAR 1:350. This is an assurance for all students in special education and has not been nor was intended to be replaced by any mandate of NCLB.

2B. How are "collaboration" and "highly qualified" related under NCLB? Part of the concern around this issue may stem from the provision under NCLB related to activities that special education teachers can perform in a collaborative setting if they are not "highly qualified" in the core content area being taught in that setting. That provision states that special education teachers may carry out several non-direct instructional activities such as assisting a highly qualified teacher in adapting the curriculum, using behavioral supports and interventions, selecting appropriate curriculum, assisting students with study skills, organizational skills, or by reinforcing instruction already received from a teacher who is "highly qualified" in the core content area. This provision is incorrectly being interpreted to mean that all special education teachers must be in a collaborative setting, or if a collaborative setting is offered then the requirement for "highly qualified" is satisfied. Neither of these interpretations is accurate, however. This provision simply states that in a collaborative setting, when the special education teacher does not meet the requirements of "highly qualified" but the core content teacher does, these non-direct instructional activities are appropriate for the special education teacher to perform.

2C. If a school decides to offer "collaboration" for all children, will that satisfy both the NCLB "highly qualified" and the IDEA "continuum of services" requirements? Placement options for students with disabilities must be made on a case-by-case basis and CANNOT be made according to administrative convenience or economic considerations. Each school district must offer the

full continuum of service options for each level of student (elementary, middle, high). While individual schools are not required to have each service option available within the school, it is not legal to change the recommended placement of a student based on the type of services that are offered by the school. In other words, schools having only one type of special education placement option violate the continuum of services mandate of IDEA if they require that all students be placed in that setting regardless of the student's individual needs or previous placement recommendations. So, a school that places all of its special education students in "collaborative" settings bypassing the IEP process, is in as much violation as a school that places all of its special education students in "self-contained" settings.

2D. What is the "least restrictive environment" as required by IDEA? Adding to the confusion may be the fact that neither "collaboration" nor "inclusion" is part of the language in IDEA. To determine appropriate placement, the "least restrictive environment" (LRE) is the legal mandate of IDEA. This provision states that:
"Each public agency shall insure:
(1) That to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled, and
(2) That special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (Federal Register - 34 C.F.R. § 300.550b).

The "least restrictive environment" for every student with a disability would fall somewhere within that continuum of alternative placements from the regular classroom to a residential or hospital setting. The regular classroom with full access to the regular education curriculum would be the ideal LRE, but due to the nature and severity of an individual student's disability, it is not the appropriate place for all students with disabilities. Therefore, all school districts must continue to make available to all students with disabilities the full continuum of placement options based on the individual needs of each student as determined by a multidisciplinary admissions and release committee.

Kentucky's Education Professional Standards Board, Addendum #4
Special Education Teachers and KTIP

The USDOE continues to debate what should be the "highly qualified" requirements for special education teachers, and Secretary Paige stated on February 20, 2004 that he will be issuing "more flexible interpretation of the requirement that all students be assigned a fully qualified teacher." Given the uncertainty of this situation, a liberal interpretation of KTIP as it applies to special education will be used. Specifically:

In elementary school, a special education teacher who has completed KTIP in a resource, departmentalized, or self-contained elementary school special education classroom is deemed to have met the HOUSSE KTIP requirement for being "highly qualified" to teach elementary exceptional children in his/her special education certification area in a resource, departmentalized, or self-contained classroom.

In middle school, a special education teacher who has completed KTIP in a resource, departmentalized, or self-contained middle school special education classroom is deemed to have met the HOUSSE KTIP requirement for being "highly qualified" to teach the core academic subject(s), for which documentation of KTIP observations and evaluations exists, to middle school exceptional children in his/her special education certification area in a resource, departmentalized, or self-contained classroom.

In secondary school, a special education teacher who has completed KTIP in a resource, departmentalized, or self-contained secondary school special education classroom is deemed to have met the HOUSSE KTIP requirement for being "highly qualified" to teach the core academic subject(s), for which documentation of KTIP observations and evaluations exists, to secondary school exceptional children in his/her special education certification area in a resource, departmentalized, or self-contained classroom.

Judy Mallory, Director
Division of Exceptional Children Services

For further information you may contact:

Kentucky's Education Professional Standards Board (EPSB) www.kyepsb.net

<<http://www.kyepsb.net>>

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